THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.18152 OF 1996

DATE: 19-10-2007

Between:

A.Jaishanker … Petitioner

And

1. The Vice Chairman, APSEB,
Hyderabad and 2 others …. Respondetns

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.18152 OF 1996

ORAL ORDER:

Seeking a direction from this Court to declare the order in B.P.Rt.102 dated 2.7.1996 issued by the 2nd respondent, promoting Sri P.Satyanarayana Rao and Sri P.V.Subba Rao as Financial Adviser and Chief Controller of Accounts, as arbitrary and illegal the present writ petition is filed.

Facts in brief are that the petitioner was appointed as an Assistant Chief Accountant in February, 1969. He joined in the said post on 26.2.1969. He was promoted as Deputy Chief Accountant/Assistant Accounts Officer by order dated 29.5.1974. Later he was promoted as Accounts Officer by order dated 17.6.1983 and subsequently as the Accounts Officer in May, 1989. He was promoted as Deputy Chief Controller of Accounts on 1.6.1992.

While matters stood thus, four vacancies, in the post of Financial Adviser and Chief Controller of Accounts, were estimated to arise by 31.8.1995. The Departmental Promotion Committee (DPC), in its meeting held on 26.8.1994, considered the names of four Deputy Chief Controllers of Accounts and arranged them in their order of merit in accordance with Regulation9(A) of the Service Regulations – Part III of the Board. The procedure prescribed in the regulations was to arrive at the total marks on the basis of the last five years confidential reports and divide it by 5 to obtain the average marks. Based on the average marks so obtained candidates were required to be graded. Candidates who secured 90% and above marks were to

be graded as being eligible for promotion out of turn. Candidates with less than 90% were to be promoted in their turn. The grades so obtained were to form the basis for fixing the criteria for considering a candidate's suitability for promotion. The D.P.C. accordingly fixed the inter-se seniority of the four candidates and on the basis of their inter-se merit and grading, the petitioner, though 3rd in the seniority list, was assigned 4th rank, while the 4th person in the list was assigned the first place in the panel. The appointing authority approved the recommendations of the D.P.C. on 26.8.1994. The life of the panel was for a period of one year and the period expired on 25.8.1995. Among the four vacancies, the fourth vacancy arose only on 31.8.1995 after expiry of the life of the panel. Pending further selections, the petitioner was given full additional charge as FA-CCA on 20.9.1995. After its meeting on 26.8.1994, the next meeting of DPC was held only on 25.6.1996 wherein the petitioner's case was also considered. The DPC examined his annual confidential reports and found that on 31.8.1995 and 31.3.1996 adverse remarks were entered therein. These adverse remarks had been communicated by Memo dated 20.6.1996 and, on receipt of the petitioner's representation dated 1.7.1996 for deleting the adverse remarks, the matter was considered and his request was rejected vide proceedings dated 24.8.1996. In view of the adverse remarks in the years 1995-96, the case of the petitioner was not recommended by the DPC for promotion to the post of Financial Adviser and Chief Controller of Accounts and instead his junior Sri P.Satyanarayana Rao was promoted terminating the incharge arrangement made earlier in favour of the petitioner.

Sri B.Siva Reddy, learned counsel for the petitioner, would submit that since the proposal to appoint candidates was made much before the expiry of the panel year, and in anticipation of four vacancies, the petitioner's case ought to have been considered for promotion. Learned counsel would refer to the case of one Sri Kantha Sarma who was promoted as the Financial Adviser and Chief Controller of Accounts on the date from which he was given full additional charge of the said post.

It is well settled that in-charge arrangements do not confer any right in favour of a candidate to claim that he should automatically be promoted. Incharge arrangements are made in administrative exigencies and do not confer any right on any employee to claim that he should be regularly promoted to the post which he hitherto held as incharge or as full additional charge.

As noted above, the recommendations of the DPC were accepted by the appointing authority on 26.8.1994 and the life of the panel of one year expired on 25.8.1995. Since the 4th vacancy did not arise within the panel year, and arose only on 31.8.1995 after expiry of the life of the panel, the mere fact that the petitioner's name was included in the panel did not confer on him any right to claim appointment to the post since the vacancy arose subsequent to the expiry of the life of the panel. It is necessary to note that Sri Kantha Sarma, with whom the petitioner claims parity, has not been arrayed as respondent in the writ petition. It is not clear as to whether the appointment of Sri Kantha Sarma, as Financial Adviser and Chief Controller of Accounts, was in accordance with the rules or not. In the absence of Sri Kantha Samra being arrayed as respondent, it is not for this Court to

examine as to whether his appointment as FA & CCA, from the date on which he held full additional charge, was in accordance with the rules or not. It needs no emphasis that if the appointment of Sri Kantha Sarma, as FA & CCA, was contrary to the Rules, it would not confer on the petitioner any right to claim similar benefit since it is well settled that no direction can be sought to perpetuate an illegality. (**Chandigarh Administration Vs. Jagjit Singh**[1]).

Sri B.Siva Reddy, learned counsel for the petitioner, would submit that the petitioner has since retired from service and that at least a direction be given to the respondents to consider giving him the notional benefit of the promotion which would entitle his being paid additional amounts towards his terminal benefits. In the absence of any rule which would entitle the petitioner to claim such a notional benefit no such direction can be granted.

The writ petition as filed is without merit and is accordingly dismissed. However, in the circumstances, without costs.

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19-1-2007

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[1] AIR 1995 SC 705